

REMARKS

Status of the Claims

After the amendment herein, claims 1-13, 18-20, and 22-27 are pending.

Claims 1, 2, 4-7, 10, 11, 18-20, 23, 24, 26, and 27 were rejected.

Claims 3, 8, 9, 12, 13, 22, and 25 were objected to but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

Claims 1, 4, 5, 11, 18, 19, 20, and 26 are amended herein.

Claims 14 - 17 and 21 were previously canceled.

Claims 1, 11, 12, 13, 18, and 26 are independent claims.

Allowable Matter

The applicant acknowledges and appreciates the indication of allowable matter in claims 3, 8, 9, 12, 13, 22, and 25. The Office indicates these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

With respect to claims 12 and 13, the applicant notes these claims are independent claims. As such, the applicant believes that these claims, as pending, are in condition for allowance. Accordingly, the applicant respectfully requests allowance of claims 12 and 13.

With respect to claims 3, 8, 9, 22, and 25, at this time, the applicant further amends their respective independent base claim. As detailed in the remarks below, the applicant respectfully submits that the amended independent claims are allowable over the cited references. Accordingly, the applicant respectfully submits that these 'objected to' claims are allowable based upon the subject matter contained therein and additionally based upon claim dependency.

Rejection Under 35 U.S.C. § 102

Claims 26 and 27 were rejected under 35 U.S.C. 102(b) as being anticipated by George (U.S. Patent No. 4,305,375). The Office asserts that George discloses in Figures 1-4 the applicant's claimed fireplace grate including a plurality of grate members (12), each grate members having a first portion extending in a first plane (Fig. 2) and a second portions extending below the first plane (17, 19, 21), the U-shaped members (17) and leg portions (19 and 21) attached to and forming portions of the grate members (12). The Office further asserts that cross

members (13 and 22) link the grate members and form a platform and cavity with cross member (22) extending along the interior of the cavity.

The applicant traverses the rejection with the submission of amended claim 26 which recites structure that distinguishes the claimed fireplace grate from the cited reference. In particular, amended claim 26 recites that each grate member has first portions extending in a first plane and a second portion extending from the first portions, the second portion deviating below the first plane at a gap between the first portions which forms an opening in the first plane. In addition, amended claim 26 recites that the opening in each of the plurality of grate members is aligned to provide access to the cavity through the first plane, wherein the platform is operative to hold a wood log in a first substantially horizontal plane and the cavity is operative to hold a firelog in a second substantially horizontal plane. This recitation distinguishes the claimed fireplace from the disclosure of George, which fails to teach or suggest every element of the amended claim.

George discloses a grate for burning newspapers held in vertical alignment for burning. A described the objective of the George invention is to in which newspapers can be burned without large portions thereof floating free during burning. George 1:43-46. Another objective of the George invention is to provide a grate in which a chimney effect is provided within the papers in the grate to facilitate burning of the same. George 1:60-63. Toward that end, George teaches a grate in which bundles of newspapers are disposed in recesses. The George grate includes a structure 11 formed of longitudinally extending spaced apart bars 12 linked by a plurality of transversely extending spaced apart bars 13, all of which lie in a horizontal plane and form a plurality of recesses 14. The structure 11 is supported in an elevated position by a pair of U-shaped members 17 which are seated on a horizontal planar surface, such as a conventional fireplace grate, to thereby support the structure 11 at a distance above the horizontal planar surface. When disposed in the recesses, the bundles of newspapers are held in place to form vertically aligned paths for the flow of air to provide a chimney effect during burning of newspapers.

As illustrated in figures 1-5 of George, each grate member (12) extends the horizontal length of the George grate for burning newspapers. Such an arrangement is required to define the structure 11 for holding newspaper in a vertical position to provide the chimney effect sought by George. The claimed fireplace grate is structurally distinguishable. In contrast to George,

each grate member of the claimed fireplace grate has first portions extending in a first plane and a second portion extending from the first portions. The second portion deviates below the first plane at a gap between the first portions which forms an opening in the first plane.

Further, the opening in each of the plurality of grate members is aligned to provide access to the cavity through the first plane. This structural arrangement facilitates accessing and loading the cavity with combustible material from above and through the first plane in which the first portions of the grate members lie. In contrast, the George structure prevents easy loading of fireplace grate with combustible material as provided by the claimed fireplace grate. Since the George grate members extend the horizontal length of the George fireplace grate, a firelog cannot be placed directly into the compartment from above; the George grate members block such movement of a firelog.

In addition, the cavity of the claimed fireplace grate is designed to hold a firelog in a substantially horizontal plane disposed below wood logs position on another substantially horizontal plane defined by the platform. This structural alignment prevents direct contact between a firelog held in the compartment and a wood log positioned on the platform. In sharp contrast, the figures of George illustrate combustible material in what the Office alleges is applicant's compartment in physical contact with combustible material positioned on the "platform." In fact, as described above, the grate for burning newspapers of George is designed for vertical alignment of combustible material to create a chimney effect.

In this manner, the applicant traverses the rejection and submits that the fireplace grate of claim 26 is distinguishable from and allowable over George, which fails to teach or suggest the claimed invention. Moreover, George teaches away from the claimed invention, which is designed to prevent direct contact between a firelog held in the compartment and a wood log positioned on the platform of a fireplace grate. Accordingly, allowance of claim 26 is respectfully requested. Based on claim dependency, the applicant also submits that claim 27 is patentable over the cited reference. Accordingly, allowance of claims 26 and 27 is respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

Claims 1, 2, 4, 7, 10, 11, 18, 19, 20, 23, and 24 were rejected under 35 U.S.C. 103(a) as unpatentable over George (U.S. Patent No. 4,305,375) in view of Gerrard (U.S. Patent No.

5,435,295). The Office asserts that George provides the teaching describes above in the section addressing the Rejection Under 35 U.S.C. § 103(a) and that Gerrard discloses the use of firelogs with fireplace grates and that ceramic logs may be placed above firelogs.

The applicant submits amended independent claims 1, 11, and 19, which recite structure that distinguishes the claims from the teaching or suggestion of George and Gerrard. Amended claim 1 recites that first portions of the grate members extend less than the entire length of the frame such that the platform has an opening that provides access to the compartment, the compartment operative to hold substantially horizontally a firelog and to prevent direct contact between the firelog and a wood log held substantially horizontally on top of the platform. Amended claim 11 recites that each grate member has first portions extending in a first substantially horizontal plane and a shaped portion deviating below the first substantially horizontal plane via a gap between the first portions, the non-moveable cross members and the grate members defining a platform and a compartment disposed below the platform, the compartment accessible via the gaps in the first portions that define the platform. Claim 11 also recites that the compartment is operative to hold a starter material in a second substantially horizontal plane and to prevent direct contact between the starter material and a wood log placed on top of the platform and held on the first substantially horizontal plane.

Amended claim 19 recites that each grate member has first portions that extend in a first substantially horizontal plane and that are separated by a gap, and a shaped portion that deviates below the first substantially horizontal plane at the gap between the first portions to links the first portions. Claim 19 also recites that the base forms a platform for supporting a log on the first substantially horizontal plane and a cavity depending from the platform for supporting a firelog or starter material in a second substantially horizontal plane, the cavity accessible through the first substantially horizontal plane via the gaps between the first portions of the first plurality of non-moveable grate members.

For the reasons discussed above, the applicant submits that these independent claims are distinguishable from the cited references. In sharp contrast with the claimed fireplace grate, in George, each grate member (12) extends the horizontal length of the grate for burning newspapers. Further, the grate members of George which form recesses for vertical alignment of newspaper, prevent prevents easy loading of fireplace grate with combustible material as provided by the openings of the fireplace grate of the claim. In addition, George fails to teach or

suggest a structural arrangement that isolates a firelog or starter material positioned in a compartment from a wood log positioned on the platform. Similarly, Gerrard fails to teach or suggest these features of the claimed fireplace grate as detailed in the previous amendment. Accordingly, the applicant respectfully submits that the claimed fireplace grate is distinguishable from and allowable over the grate for burning newspapers of George and the wire rack of Gerrard, whether considered individually or in combination.

Claims 2, 4, 7, 10 and 18 depend directly and indirectly from claim 1 and thus include all of the limitations of claim 1. The applicant reiterates that claim 1 is patentable over the cited art for the reasons stated above, specifically, the failure of the cited art to teach or suggest each and every limitation of the independent claims. Accordingly, dependent claims 2, 4, 7, 10 and 18 are believed patentable based on such dependency and any further patentable limitation contained within each claim.

Based upon their dependency on claims 19 and 11, the applicant submits that claims 20 and 23 and claim 11 respectively are also patentable over the cited reference. Accordingly, the applicant respectfully request allowance of these claims.

Claim 5 is rejected as obvious over George in view of Gerrard and further in view of Thompson (U.S. Patent No. 4,360,001). Claim 6 is rejected as obvious over George in view of Gerrard and further in view of Dotson et al. (U.S. Patent No. 4,692,168).

Claims 5 and 6 depend from and include all of the limitations of base claim 1. Without at this time individually addressing the secondary reference for each rejection, which is relied on for secondary teaching concerning the V-shape and the gel log, the applicant reiterates the remarks above concerning the base claim with respect to these cited references and respectfully submits that claims 5 and 6 are patentable based on claim dependency and any further patentable limitation contained within each claim. The applicant therefore respectfully requests withdrawal of these rejections and allowance of all claims.

Other Amendments

The applicant notes that claims 4, 5 are amended to correct grammatical inconsistencies. Further, claims 18 and 20 are amended to recite "the opening" and "the log" respectively since these terms are first introduced in claims 1 and 19 respectively. These amendments thus correct antecedence in accord with amendment made to the respective base independent claim.

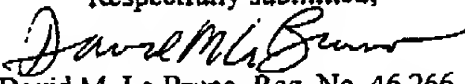
Docket No. 0506-4021

Conclusion

Based on the foregoing remarks, it is respectfully submitted that the claims as currently pending are patentable and in condition for allowance. Reconsideration of the application and withdrawal of all rejections are respectfully requested.. In the event that a telephone conference would facilitate examination in any way, the Examiner is invited to contact the undersigned representative at the number provided.

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Respectfully submitted,

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